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JUN 28 2012

CLERK
UNITED STATES BANKRUPTCY COURT
SAN JOSE, CALIFORNIA

UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re:]	Case No. 09-61169-ASW
PETER A. CRAIGHEAD,]	Chapter 13
Debtor]	
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PETER A. CRAIGHEAD,]	Adversary No. 10-05379
Plaintiff,]	
vs.]	
CREATIVE INVESTMENT GROUP, INC.,]	
Defendant.]	
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**MEMORANDUM DECISION
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Before the Court is a Motion for Summary Judgment ("Motion") filed by Defendant Creative Investment Group, Inc. ("Defendant"), which the Court took under submission following a hearing on May 1, 2012. Plaintiff and Debtor Peter A. Craighead ("Plaintiff") has not filed any opposition to the Motion. Because Plaintiff has not come forward with any evidence to support an essential element of Plaintiff's claims, and for the reasons which follow, the Court grants the Motion.

1 **I. BACKGROUND**

2 Plaintiff's First Amended Complaint ("Complaint") asserts
3 claims against Defendant for violation, including willful
4 violation, of the automatic stay, as well as a claim seeking a
5 temporary restraining order.

6 After a hearing held December 1, 2010, this Court issued a
7 temporary restraining order, but set a preliminary injunction
8 hearing for January 25, 2011. The hearing was continued multiple
9 times, and in the meantime, the Court issued an injunction until
10 the issues could be decided. Ultimately, after considering the
11 parties' arguments and evidence, the Court dissolved the injunction
12 on November 21, 2011. Therefore, the only claims remaining in the
13 case are for violation of the automatic stay.

14 The property at issue is real property located at 7871
15 Prestwick Circle, San Jose, California ("the Property"). In the
16 Complaint, Plaintiff alleges that Defendant willfully violated the
17 automatic stay when Defendant conducted a trustee's sale of the
18 Property on August 31, 2010. Defendant asserts that the trustee's
19 sale on August 31, 2010 did not violate the automatic stay because
20 Plaintiff had no legal or equitable interest in the Property on
21 that date; therefore, the Property was not property of Plaintiff's
22 bankruptcy estate and not subject to the automatic stay. The issue
23 before this Court is whether Plaintiff had any ownership interest
24 in the property on August 31, 2010, when the trustee's sale
25 occurred.

26 Plaintiff filed the underlying Chapter 13 bankruptcy on
27 December 21, 2009. Because Plaintiff had filed a previous
28 bankruptcy (Case No. 09-58845-RLE) that was dismissed less than one

1 year previously on December 11, 2009, a 30-day automatic stay
2 applied. See 11 U.S.C. § 362(c)(3)(A). Plaintiff filed a motion
3 to extend the automatic stay pursuant to section 362(c)(3)(B) of
4 the Bankruptcy Code, and the Court granted the motion to extend on
5 April 2, 2010. The Court's order extended the automatic stay
6 through August 31, 2010, the same date on which Defendant held the
7 trustee's sale. Plaintiff's underlying bankruptcy case was
8 dismissed on May 17, 2011.

9
10 **II. MATERIAL FACTS**

11 Based upon the evidence submitted by Defendant with the
12 Motion, which the Court construes in a light most favorable to
13 Plaintiff, the Court makes the following findings.

14 The following facts concern the chain of title for the
15 Property from August 21, 1997, onward. As explained below, the
16 evidence shows that there was nothing remarkable about the chain of
17 title until a trustee's sale was held on June 3, 2003, at which
18 point there were two divergent sets of transactions concerning the
19 Property. Under one set of transactions, title to the Property was
20 purportedly conveyed to Plaintiff. Under the other, Plaintiff was
21 never conveyed title.

22 On August 21, 1997, a grant deed was recorded by which Robert
23 and Laura M. Thompson ("the Thompsons") conveyed all interest in
24 the Property to Robert and Evonne Helwig ("the Helwigs"). On the
25 same day, a deed of trust in favor of Accredited Home Lenders was
26 recorded. The Helwigs were listed as the borrowers on this deed of
27 trust, and Fidelity National Title Company was listed as the
28 trustee.

1 On September 23, 1997, a substitution of trustee and full
2 reconveyance of the deed of trust was recorded. The substitution
3 of trustee substituted the Thompsons as trustees in place of
4 Fidelity National Title Company. On May 19, 1999, a second
5 substitution of trustee and full reconveyance of the deed of trust
6 was recorded. This second substitution of trustee replaced the
7 September 23, 1997 instrument and reconveyed the deed of trust in
8 favor of Accredited Home Lenders.

9 On June 30, 2000, a grant deed was recorded by which Robert
10 Helwig conveyed all interest in the property to David M. Craighead.
11 On September 19, 2001, a grant deed was recorded by which David M.
12 Craighead conveyed all interest in the Property to Carlton
13 Craighead, Plaintiff's late father.

14 On June 3, 2003, a number of events transpired. First, at
15 8:37 a.m., a grant deed was recorded by which Carlton Craighead
16 conveyed all interest in the Property to Theodore Gallis ("Mr.
17 Gallis"). At 9:30 a.m., Mr. Gallis filed a voluntary petition for
18 Chapter 13 bankruptcy (Case No. 03-53578-ASW). A trustee's sale
19 scheduled for 11:00 a.m. went forward despite Accredited Home
20 Lenders' knowledge of Mr. Gallis' bankruptcy case. On June 6,
21 2003, a trustee's deed upon sale conveying all interest in the
22 Property to First Union National Bank as trustee for American
23 Residential Eagle Certificate Trust 1998-1 was recorded.

24 At the time the June 3, 2003 trustee's sale was conducted,
25 there was an automatic stay in place in Mr. Gallis' bankruptcy
26 case. However, on September 18, 2003,¹ this Court issued an order
27

28 ¹ The Court issued an oral ruling on September 18, 2003, which
was followed by a written order on September 26, 2003.

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1 for nunc pro tunc relief, retroactively annulling the automatic
2 stay on the grounds that Mr. Gallis had filed the bankruptcy case
3 with no intent to reorganize and with the purpose of "prolonging
4 the hindrance of the [creditor's] foreclosure." In reaching this
5 conclusion, the Court considered multiple prior bankruptcy cases by
6 members of the Craighead family as well as the timing of the
7 transfer of the Property to Mr. Gallis, and found that Mr. Gallis
8 filed the bankruptcy petition "as another step in the Craigheads'
9 pattern of delaying foreclosure." On July 13, 2004, the order for
10 nunc pro tunc relief was upheld by the United States District Court
11 (Judge Ware) on appeal (Case No. 05-cv-04452).

12 The order retroactively annulling the automatic stay in Mr.
13 Gallis' bankruptcy case had the effect of validating Accredited
14 Home Lenders' trustee sale of the Property held on June 3, 2003 and
15 the June 6, 2003 trustee's deed upon sale conveying all interest in
16 the Property to First Union National Bank. See Analysis, infra, at
17 9-11. Therefore, Mr. Gallis no longer had title to the Property
18 after the trustee's sale on June 3, 2003 and recordation of First
19 Union National Bank's trustee's deed on June 6, 2003.

20 Notwithstanding the trustee's sale stripping Mr. Gallis of any
21 interest in the Property, Mr. Gallis attempted to transfer
22 ownership of the Property after the trustee's sale. On September
23 19, 2003, one day after the Bankruptcy Court issued an oral ruling
24 retroactively annulling the stay, but before the Court issued the
25 written decision for nunc pro tunc relief, Mr. Gallis issued a
26 grant deed conveying Mr. Gallis' interest in the Property to
27 Carlton Craighead, and the deed was recorded. On December 24,
28 2005, Carlton Craighead issued a grant deed, later recorded on

1 January 24, 2006, purporting to convey a 95% interest in the
2 property to Carlton Craighead and a 5% interest in the Property to
3 Plaintiff. On July 16, 2007, Carlton Craighead issued a separate
4 grant deed, later recorded on August 3, 2007, purporting to convey
5 a 99% interest in the property to Carlton Craighead and a 1%
6 interest in the property to Plaintiff. It is based upon this
7 series of transactions that Plaintiff claims an interest in the
8 Property.

9 In the meantime, on February 14, 2007, a quitclaim deed was
10 recorded by which Wachovia Bank, N.A., formerly known as First
11 Union National Bank, transferred all interest in the Property to
12 First American Title Insurance Company. Then, on March 7, 2008, a
13 quitclaim deed was recorded by which First American Title Insurance
14 Company transferred all interest in the property to Carlton
15 Craighead.

16 The March 7, 2008 quitclaim deed references a notice of
17 rescission recorded on January 18, 2008, and confirms that Carlton
18 Craighead is the record owner of the property. The quitclaim deed
19 does not specify what was rescinded, but mentions instrument number
20 19716887, which is not in this Court's record. On April 20, 2011,
21 in the context of the proceedings in this case on Plaintiff's
22 request for a temporary restraining order, Defendant submitted a
23 Declaration from Stewart Title Insurance Company employee Gary
24 Moore ("Moore Declaration"). The Moore Declaration purports to
25 list all documents appearing in the public records after August 21,
26 1997 relating to or affecting the interest in the Property acquired
27 or reserved by Carlton B. Craighead. The Moore Declaration does
28 not provide any evidence of a January 18, 2008 rescission, or of

1 any rescission of the June 3, 2003 trustee's sale.

2 Counsel for Defendants, Wayne M. Abb ("Mr. Abb") stated on the
3 record at a hearing on June 23, 2011 that notwithstanding the
4 reference to a notice of rescission in the March 7, 2008 quitclaim
5 deed, the June 3, 2003 trustee's sale was not rescinded. However,
6 Mr. Abb's statements are not evidence and the Court does not
7 consider such statements in rendering this decision.

8 Previously, in this Court's Order Dissolving Preliminary
9 Injunction issued November 21, 2011, this Court remarked that based
10 upon the record, it appeared that the June 3, 2003 trustee's sale
11 was not rescinded and that Plaintiff never received any ownership
12 interest in the Property.

13
14 **III. STANDARD OF REVIEW**

15 Summary judgment shall be rendered by the Court if the
16 pleadings, depositions, answers to interrogatories, and admissions
17 on file, together with the affidavits, if any, show that there is
18 no genuine issue as to any material fact and that the moving party
19 is entitled to a judgment as a matter of law. Fed. R. Bankr. P.
20 7056 (incorporating Fed. R. Civ. P. 56); Matsushita Elec. Indus.
21 Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 584-85 (1986). All
22 reasonable inferences must be drawn against the moving party.
23 Adickes v. S.H. Kress & Co., 398 U.S. 144, 158-59 (1970); United
24 States v. Diebold, Inc., 369 U.S. 654, 655 (1962). Material facts
25 are those that may affect the outcome of the case. A dispute as to
26 a material fact is genuine if there is sufficient evidence for a
27 reasonable jury to return a verdict for the non-moving party.
28 Anderson v. Liberty Lobby, Inc. 477 U.S. 242, 248 (1986).

1 Although Plaintiff has not filed any opposition to Defendant's
2 Motion, Plaintiff's failure to oppose the Motion does not obviate
3 Defendant's affirmative obligation to demonstrate the absence of a
4 genuine dispute as to any issues of material fact. Martinez v.
5 Stanford, 323 F.3d 1178, 1182-1183 (9th Cir. 2003). However,
6 because Plaintiff -- not Defendant -- bears the burden of proof at
7 trial, Defendant may satisfy the burden of production under Rule 56
8 in either of two ways. First, Defendant may submit affirmative
9 evidence that negates an essential element of Plaintiff's claim.
10 Second, Defendant may demonstrate to the Court that Plaintiff's
11 evidence is insufficient to establish an essential element of
12 Plaintiff's claims. Nissan Fire & Marine Ins. Co., Ltd. v. Fritz
13 Cos., Inc., 210 F.3d 1099, 1102 (9th Cir. 2000). If Plaintiff
14 fails to produce sufficient competent evidence to establish
15 Plaintiff's claim, then Defendant is entitled to summary judgment.
16 See Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986).

17
18 **IV. ANALYSIS**

19 The issue in this case is whether Plaintiff had any ownership
20 interest in the Property on August 31, 2010, when there was a
21 trustee's sale of the property. Only with such ownership interest
22 can Plaintiff prevail on Plaintiff's claims that the August 31,
23 2010 trustee's sale violated the automatic stay in Plaintiff's
24 bankruptcy case.

25 Defendant's Motion contends that Plaintiff cannot establish
26 that Plaintiff held an ownership interest in the property on August
27 31, 2010. Plaintiff has not opposed Defendant's Motion, but in the
28 context of the restraining order proceedings, Plaintiff previously

1 offered as evidence of Plaintiff's ownership of the Property two
2 grant deeds -- the first by which Carlton Craighead purportedly
3 transferred a 5% interest to Plaintiff on December 24, 2005, and
4 the second by which Carlton Craighead purportedly transferred a 1%
5 interest in the Property to Plaintiff on July 16, 2007.
6 Additionally, Plaintiff previously submitted two preliminary title
7 reports issued by First American Title Company, both of which
8 reflect what is on the July 16, 2007 grant deed -- namely, that as
9 of October 14, 2009 at 7:30 A.M., Plaintiff owned a 1% interest in
10 the Property.

11 Carlton Craighead's execution of the two grant deeds is not
12 disputed. However, Plaintiff has not provided any evidence
13 addressing the underlying question of whether Carlton Craighead had
14 any interest in the Property to convey when Carlton Craighead
15 executed the two grant deeds.

16 When the trustee's sale occurred on June 3, 2003, there was an
17 automatic stay in Mr. Gallis' bankruptcy case which rendered the
18 trustee's sale void. See Schwartz v. United States (In re
19 Schwartz), 954 F.2d 569, 571 (9th Cir. 1992). This Court later
20 annulled the automatic stay in Mr. Gallis' bankruptcy case
21 retroactive to June 3, 2003. However, Mr. Gallis also transferred
22 his interest in the Property -- if any -- to Carlton Craighead.
23 This Court must resolve whether Mr. Gallis' transfer of the
24 Property to Carlton Craighead had any legal effect.

25 This issue is best resolved by looking at the reasons the
26 Court retroactively annulled Mr. Gallis' stay, and the timing of
27 that ruling. Although troubled by the violation of the stay in Mr.
28 Gallis' case, the Court annulled the stay because the facts of the

1 case were "quite extreme" in that members of the Craighead family
2 had engaged in a pattern of delaying foreclosure of the Property
3 through multiple bankruptcy filings and later by transferring the
4 Property to Mr. Gallis, apparently without any payment by Mr.
5 Gallis, so that the Property would be shielded from foreclosure.
6 Specifically, approximately one hour after members of the Craighead
7 family transferred the Property to Mr. Gallis, Mr. Gallis filed the
8 bankruptcy case, with a patently unconfirmable plan, and apparently
9 with intent to hinder the foreclosure and no intent to reorganize.
10 The transfer by Mr. Gallis to Carlton Craighead after the June 3,
11 2003 trustee's sale, and after the Court's oral ruling granting
12 retroactive annulment of the stay, would appear to be another act
13 in furtherance of the Craighead family's scheme.

14 Although In re Schwartz clarifies that violations of the
15 automatic stay are void, rather than voidable, the decision also
16 explains that "[i]f a creditor obtains retroactive relief under
17 section 362(d), there is no violation of the automatic stay, and
18 whether violations of the stay are void or voidable is not at
19 issue." 954 F.2d at 571-73. The decision in In re Schwartz also
20 explains that under § 362(d), bankruptcy courts have the "power to
21 ratify retroactively any violation of the automatic stay which
22 would otherwise be void." Id. at 573. Consequently, because the
23 Court ordered retroactive relief from the automatic stay in Mr.
24 Gallis' bankruptcy case, the trustee's June 3, 2003 sale did not
25 violate the automatic stay and was not void. See id.; see also In
26 re National Environmental Waste Corp., 129 F.3d 1052, 1054-56 (9th
27 Cir. 1997) (discussing bankruptcy court's authority to
28 retroactively annul the automatic stay, citing In re Schwartz);

1 Khozai v. Resolution Trust Corp., 177 B.R. 524, 527 (E.D. Va. 1995)
2 (under § 362(d), a bankruptcy court may retroactively annul the
3 automatic stay to validate a foreclosure sale); Matter of Ricks, 26
4 B.R. 134, 137-38 (Bankr. D. Idaho 1983) (validating foreclosure
5 sale nunc pro tunc).

6 In addition, the Court retroactively annulled the stay in an
7 oral ruling issued September 18, 2003 -- one day before Mr. Gallis
8 transferred the Property to Carlton Craighead. Although the ruling
9 was not set forth in writing until September 26, 2003, the
10 September 19, 2003 transfer of the Property from Mr. Gallis to
11 Carlton Craighead lacked legal effect, because Mr. Gallis had no
12 ownership interest to convey. See Noli v. Commissioner of Internal
13 Revenue, 860 F.2d 1521, 1525 (9th Cir. 1988) (a ruling lifting an
14 automatic stay is effective and binding when stated orally on the
15 record). Consequently, Carlton Craighead did not possess any
16 interest in the Property from June 3, 2003, when First Union
17 National Bank took title, until March 7, 2008, when First American
18 Title Insurance company executed a quitclaim deed in favor of
19 Carlton Craighead.

20 Similarly, all of the conveyances of the Property by Carlton
21 Craighead to Plaintiff after September 19, 2003, were invalid
22 because Carlton Craighead had no interest to convey until March 7,
23 2008, when Carlton Craighead apparently took title pursuant to a
24 quitclaim deed. There is no evidence in the record that Carlton
25 Craighead attempted to convey the property to Plaintiff at any time
26 after March 7, 2008. Therefore, the record reflects a complete
27 lack of evidence demonstrating that Plaintiff had any ownership
28 interest in the Property. Consequently, the trustee's sale

1 occurring on August 31, 2010, could not violate the automatic stay
2 in Plaintiff's bankruptcy case.

3 There is, however, one additional factual issue. The
4 quitclaim deed recorded on March 7, 2008 in favor of Carlton
5 Craighead refers to a January 18, 2011 notice of rescission. If
6 the June 3, 2003 trustee's sale had been retroactively rescinded,
7 it would support Plaintiff's assertion that the transfers of
8 property from Mr. Gallis to Carlton Craighead, then to Plaintiff,
9 were valid. In turn, this would mean that Plaintiff held an
10 ownership interest in the Property at the time of the August 31,
11 2010 trustee's sale.

12 However, apart from the stray reference to a possible
13 rescission in the quitclaim deed, Plaintiff has not produced any
14 evidence, such as a notice of rescission, that the June 3, 2003
15 trustee's sale was, in fact, rescinded. After the Court previously
16 requested additional information from the parties on this issue,
17 Plaintiff came forward with no additional evidence and has not even
18 contended that the June 3, 2003 trustee's sale was rescinded.
19 Moreover, the Moore Declaration indicates that the trustee's sale
20 on June 3, 2003 was not rescinded on January 18, 2008 or at any
21 other time.

22 Because Plaintiff has produced no evidence that the trustee's
23 sale on June 3, 2003 was rescinded or otherwise invalid, Plaintiff
24 has not met Plaintiff's burden of establishing that Carlton
25 Craighead had any interest in the Property to convey to Plaintiff
26 at the time the conveyances were attempted, specifically, on
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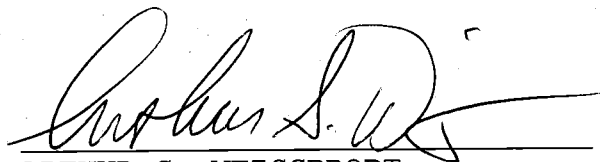
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1 December 24, 2005 and July 16, 2007. Therefore, Plaintiff has not
2 demonstrated that Plaintiff held any interest in the Property on
3 August 31, 2010, when the trustee's sale was conducted. Because
4 this is an essential element of Plaintiff's claims that Defendant
5 violated the automatic stay, Defendant is entitled to judgment as a
6 matter of law. See Nissan Fire & Marine Ins. Co., Ltd., 210 F.3d
7 at 1102; Celotex Corp., 477 U.S. at 322-23. Accordingly, the Court
8 grants Defendant's Motion for Summary Judgment.

9 IT IS SO ORDERED.

10 Dated:

11 6/28/12

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13 ARTHUR S. WEISSBRODT
14 United States Bankruptcy Judge
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UNITED STATES BANKRUPTCY COURT
For The Northern District Of California

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